

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE DUNBAR GREEN JA
THE HON MR JUSTICE LAING JA**

SUPREME COURT CIVIL APPEAL NO COA2024CV00138

BETWEEN	NT	APPELLANT
AND	JT	RESPONDENT

Lemar Neale and Miss Chris-Ann Campbell instructed by NEA|LEX for the appellant

Mrs Shannon Johnson and Miss Ceejay Cummings instructed by Johnson Hay & Company for the respondent

30, 31 July and 17 October 2025

Family Law – Application for sole custody and care and control of minor children – Whether it is in the best interests of the children to grant custody, care and control to parent residing outside the jurisdiction – Welfare of the children of first and paramount consideration – Children (Guardianship & Custody) Act, s 18

Evidence – Application to receive fresh evidence – Whether threshold factors met

F WILLIAMS JA

[1] I have read, in draft, the reasons for judgment of Dunbar-Green JA and they accord with my own reasons for concurring with the order as outlined in para. [3] below.

DUNBAR GREEN JA

Introduction

[2] This appeal arose from the decision of Wong-Small J ('the learned judge'), made on 15 November 2024, in which orders were granted concerning custody, care and control; access; and relocation of two minor children of the marriage — NT, born on 17 December 2017, and ET, born on 1 August 2019. The learned judge ordered, among other things, that the parties be granted joint custody, with care and control of both children to the respondent, effective 30 June 2025, and that the children be permitted to relocate to reside with the respondent in the United States of America ('the USA'). The appellant challenged the decision.

[3] We heard the appeal on 30 and 31 July 2025 and delivered our oral decision on the latter date, mindful of the parties' need for finality and the urgency of minimising disruption to the children's lives. Having been satisfied that the learned judge did not err in law, principle or fact, or her decision was not plainly wrong, we made the following orders:

"1. The appeal is dismissed.

2. Orders 1, 4 and 7 of the orders of Wong-Small J, made on 15 November 2024, are affirmed.

3. The Christmas holiday is to be broken up into two periods; the first from the children's school break to 27 December (the Christmas period) and the second from 28 December to two days before the resumption of school (the New Year period). Each parent will have the children for alternate Christmas and New Year periods. The parents will share the Easter holiday equally. The appellant is to have the children for six weeks of the summer holidays.

4. No order as to costs."

[4] We promised to give written reasons, and this is a fulfilment of that promise.

Background

[5] The appellant, NT, and the respondent, JT, were married on 17 October 2015. Their two children were born in the USA and hold dual citizenship in the USA and

Jamaica. The parties are permanent residents of the USA and resided together in Kingston, Jamaica, for the greater part of their marriage.

[6] In February 2021, the respondent left the matrimonial home, citing abuse. Both parties initiated proceedings for custody in the Kingston and Saint Andrew Family Court ('the Family Court'), with the respondent also applying for a protection order under the Domestic Violence Act. The Family Court granted interim joint custody and residential access to both parents. Those proceedings were discontinued, by consent, in or around October 2021 following reconciliation between the parties through court-directed counselling.

[7] The parties subsequently relocated to a rented premises; however, their marital difficulties persisted. On 23 March 2022, the respondent left Jamaica with the children and returned to the USA without informing the appellant or obtaining the appellant's consent. She cited safety concerns and the need to protect herself and the children. The appellant contended that she abducted the children.

[8] On 26 July 2022, the appellant initiated proceedings in the Supreme Court, by way of fixed date claim form supported by affidavit. He sought, among other orders, sole custody, care and control of the children with reasonable access to the respondent.

[9] The appellant also commenced proceedings under the Hague Convention on the Civil Aspects of International Child Abduction, 1980, in the USA. On 21 February 2023, the United States District Court for the Southern District of Texas ordered that the children be returned to their country of habitual residence. ET was returned to Jamaica on 10 March 2023 and NT approximately two months later.

[10] Following this, on 23 March 2023, the respondent filed a notice of application for court orders, supported by affidavit, in the Supreme Court, seeking, among other orders, interim sole custody and permission for the children to leave the jurisdiction to reside in Texas, USA. On 28 April 2023, by consent, temporary custody, care and control of the children were granted to the appellant, with the respondent having liberal electronic access.

[11] The matter proceeded to a full trial on 3 and 4 June 2024. Judgment was reserved and subsequently delivered on 15 November 2024, whereupon the decision and orders now under challenge were made.

Summary of the learned judge's decision and orders

[12] The learned judge, in coming to her decision, reviewed the relevant law and considered that the welfare of the children was the paramount consideration. A major issue which arose for her determination was whether the evidence supported an order for sole custody to either party.

[13] She considered that both parents demonstrated the ability to care for and interest in caring for the children, whom she found to be well socialised and academically successful in their school environment.

[14] The learned judge found, however, that prior to March 2022, the children were in a home environment that was traumatic and unhealthy for them. The conduct of the appellant was held to be injurious to the children and detrimental to their welfare, notwithstanding that they were not themselves direct victims of abuse. She also found that the appellant had reprimanded NT in a manner that was inappropriate and potentially damaging to his self-esteem and self-confidence.

[15] Both parties were found to be less than straightforward in some of their responses, but the respondent and her witness were regarded as more credible. The learned judge rejected the appellant's evidence denying the abuse alleged by the respondent and accepted the respondent's evidence that he was physically abusive toward her. The learned judge further rejected the appellant's claim that the respondent had abused the children.

[16] The learned judge opined that the appellant's parenting capacity was affected by his refusal to acknowledge his abusive conduct and its negative impact on the children. This, in her view, had to be considered in determining their best interests.

[17] The learned judge ultimately ordered joint custody to both parents with care and control to the respondent.

The appeal

[18] The appellant, displeased with the decision of the learned judge, filed a notice and grounds of appeal on 27 December 2024, and an amended notice and grounds of appeal on 2 July 2025. The following grounds of appeal were advanced before this court:

“a. The learned Judge erred as a matter of fact and/or law in failing to adequately consider the welfare of the children as a paramount consideration when she ordered that the Respondent should have care and control of them and that they should be relocated to the United States of America to reside with the Respondent.

b. The learned Judge erred in law and/or fact in failing to consider factors relevant to the assessment of the welfare of the children, including, but not limited to, the fact that:

- (i) the children were ordinarily resident in Jamaica at the time the Respondent kidnapped them and removed them from the jurisdiction without the knowledge or consent of the Appellant;
- (ii) the children were only returned to the jurisdiction after the Appellant successfully petitioned a Texas Court under The Hague Convention;
- (iii) the children were in a stable home in Jamaica;
- (iv) the children are excelling academically in school in Jamaica;
- (v) the children are well cared for by the Appellant;
- (vi) the order will have the effect of uprooting the children; and
- (vii) the order is not in the best interest of the children.

c. The learned Judge erred in fact and/or law and/or wrongly exercised her discretion in the balancing exercise in relation to the factors to be considered in assessing the welfare of the children and the paramount consideration.

d. The learned Judge erred in law in placing too much weight on one relevant factor and little or no weight on other relevant factors in assessing or balancing the welfare of the children as the paramount consideration.

e. The learned Judge erred in failing to appreciate that the relevant factors, when considered against the evidence, demonstrate that the children's welfare is best served with them being in the care and custody of the Appellant.

f. The learned Judge erred in fact and/or law and/or wrongly exercised her discretion when she placed too much weight on the Respondent's witness' evidence, despite the fact that the witness had an interest to serve and that her evidence was significantly undermined under cross-examination.

g. The learned Judge erred in fact and/or law and/or wrongly exercised her discretion by placing too little or no weight on the Appellant's detailed and unchallenged evidence as to the routine he had for the children while in his physical control; which was demonstrably in the best interest of the children.

h. The learned Judge erred in disregarding or insufficiently regarding the Social Enquiry Report which recommended that the Appellant should have care and control of the children.

i. The learned Judge erred in fact and/or law in placing significant weight on the relationship between the Appellant and the Respondent, thereby disregarding or undermining the paramount consideration which was the welfare of the children.

j. The learned Judge erred in failing to appreciate that the children were not being abused physically, emotionally or psychologically by the Appellant.

k. The learned Judge erred in failing to appreciate that the children were in the physical care and control of the Appellant since their return to the jurisdiction in March/April 2023, while the Respondent remained overseas for a lengthy period of time.

l. The learned Judge erred in failing to appreciate that the order will have the effect of uprooting and/or displacing the children who are currently doing well in school since their return to the jurisdiction and who are receiving religious instructions and whose emotional and psychological needs are currently being met by the Appellant.

m. The learned Judge erred in disregarding or insufficiently regarding the totality of the evidence which caused her to derive an erroneous conclusion that resulted in the impugned order being made.”

Application for stay of execution

[19] After the filing of the appeal, the appellant, on 15 May 2025, filed in this court a notice of application for court orders seeking a stay of execution of the orders of the learned judge. The application was supported by affidavit evidence from the appellant and one of the appellant’s attorneys-at-law. On 24 June 2025, a single judge of appeal granted, among other orders, an interim stay of the judge’s order, pending the expedited hearing of the appeal.

Notice of application to adduce fresh evidence

[20] The appellant, on 18 July 2025, filed a notice of application for court orders seeking permission to adduce fresh evidence, supported by his affidavit sworn to on the same date. He sought to adduce copies of school reports and certificates of achievement from the children’s school for the academic year 2024/2025, along with certificates of participation in Sunday School between September 2023 and June 2024, for both children. This purported fresh evidence was intended to support the appellant’s ground of appeal - that the learned judge failed to place sufficient weight on the moral upbringing and educational advancement of the children.

[21] Before hearing the substantive appeal, we heard and considered the application.

Appellant’s submission

[22] It was submitted, on the appellant’s behalf, that the reception of the evidence was justifiable on the bases that it was not available for use before the trial, it was credible, and it might have had an important influence on the result of the case (**Ladd v Marshall** [1954] EWCA Civ 1 was cited).

Respondent’s submission

[23] Also citing **Ladd v Marshall**, counsel for the respondent objected to the application, contending that the application did not meet at least one of the criteria,

namely that the evidence, if given, would probably have an important influence on the result of the case.

Disposal of the application

[24] Having carefully reviewed the exhibits and submissions of counsel, we concluded that the purported fresh evidence did not disclose material that had not been previously made available to the court or was essential for us to determine whether the learned judge erred in her exercise of discretion. Her findings remained adequately supported by the available evidence. Moreover, it was not shown by the appellant that the evidence, if given, “would probably have an important influence on the result of the case” (see **Ladd v Marshall**, page 748). Accordingly, we refused the application.

[25] I now turn to consider the substantive issues in this appeal.

Issues in appeal

[26] Considering the need for timeliness, the 13 grounds of appeal were reviewed and grouped thematically. What follows are three distilled issues that, in my view, provide an efficient and coherent framework for their resolution.

- (i) Whether the learned judge erred by failing to treat the welfare of the children as the paramount consideration when making the order for care and control in favour of the respondent and authorising their relocation to the USA.
(Grounds: a, c, e, m)
- (ii) Whether the learned judge correctly assessed the material factors affecting the welfare of the children, including:
 - (a) the circumstances surrounding their removal from, and return to, Jamaica;
 - (b) their current emotional and physical stability;
 - (c) their academic standing; and
 - (d) the absence of any evidence of abuse or harm while in the appellant’s care.*(Grounds: b, d, g, i, j, k, l)*

- (iii) Whether the learned judge gave balanced consideration to the evidence before the court, or whether undue weight was placed on the respondent's account and insufficient regard given to the appellant's testimony and the contents of the Social Enquiry Report.
(*Grounds: f, h*)

Standard of review

[27] The powers of an appellate court in reviewing a judge's exercise of discretion are well established and apply equally in child custody matters. Intervention is warranted only where the first instance judge acted outside the ambit of judicial discretion or erred in principle. This principle has been variously articulated, including in **G v G (Minors: Custody Appeal)** [1985] 1 WLR 647 ('**G v G**'), which adopted the principle in **B v W (Wardship: Appeal)** [1979] 1 WLR 1041 – that "the court may not intervene unless it is satisfied either that the judge exercised his discretion upon a wrong principle or that, the judge's decision being so plainly wrong, he must have exercised his discretion wrongly".

[28] Mere disagreement with the judge's view of the evidence or the weight accorded to competing factors will not suffice, although it was recognised by the majority of the Court of Appeal (Browne and Bridge LJ) in **Re F (A Minor) (Wardship: Appeal)** [1976] 1 All ER 417, that "an appellate court has the jurisdiction to reverse or vary a decision... made by a judge in the exercise of his discretion, if they considered that he had given insufficient weight or too much weight to certain factors". That said, it was later pointed out by Browne LJ, at page 440, that the discretion is limited in scope where the judge saw and heard the witnesses:

"The general principle is clear. If this was a discretion not depending on a judge having seen and heard the witnesses, an error in the balancing exercise, if I may adopt the phrase for short, would entitle the appellate court to reverse his decision...The reason for a practical limitation on the scope of that principle where the discretion exercised depends on seeing and hearing witnesses is obvious. The appellate court cannot interfere if it lacks the essential material on which the balancing exercise depended...If in any discretion case concerning children the appellate court can clearly detect that a conclusion, which is neither dependent on nor justified by

the trial judge's advantage in seeing and hearing witnesses, is vitiated by error in the balancing exercise, I should be very reluctant to hold that it is powerless to interfere."

[29] It was based on the principle expressed above that I reviewed the learned judge's exercise of her discretion.

Issue i: Whether the learned judge erred by failing to treat the welfare of the children as the paramount consideration when ordering care and control to the respondent and authorising their relocation to the USA (Grounds a, c, e, m)

Submissions on behalf of the appellant

[30] Counsel for the appellant, Mr Neale, relied on **Dennis Forsythe v Idealin Jones** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 49/1999, judgment delivered 6 April 2001 ('**Dennis Forsythe v Idealin Jones**'), and **King v Low** [1985] 1 SCR 87 ('**King v Low**'), to underscore the paramountcy of the children's welfare and the factors relevant to its assessment. He submitted that the learned judge failed to conduct a holistic evaluation and did not properly weigh key considerations, particularly the children's current stability, academic performance, and the risk of disruption to their lives. He further argued that the respondent's conduct—specifically the unauthorised removal of the children from the jurisdiction—ought to have been given greater weight in determining the custody outcome.

[31] Mr Neale relied on **Re S (A Minor) (Custody)** [1991] 2 FLR 388 and section 18 of the Children (Guardianship and Custody) Act ('the Act'), contending that neither parent's claim is inherently superior based solely on gender nor historical caregiving status. The learned judge, he argued, appeared to adopt an assumption that the children's welfare was best served by placement with the mother, rather than conducting a balanced assessment of actual evidence.

[32] Mr Neale highlighted several welfare factors that, in his view, had not been adequately considered. These included the stability re-established upon the children's return to Jamaica in March/April 2024; the appellant's de facto custody for over a year; the academic success of the children (particularly NT's) since returning to Jamaica; regular church attendance; the active involvement of the paternal

grandparents in Jamaica; the structured routine implemented by the appellant; the respondent's failure to resume residency in Jamaica; and the absence of any neglect or abuse while the children were in the appellant's care.

[33] Mr Neale contended that the children had been living stably in Jamaica before and after being "abducted" by the respondent to the USA and submitted that the learned judge failed to appreciate how her order of care and control to the respondent would uproot the children from such stability and subject them to uncertainty (**F v D** [2017] JMSC Civ 9 ('**F v D**') was cited). As to moral and religious upbringing, Mr Neale pointed to the appellant's unchallenged evidence that the children consistently attended Mass and Sunday School (at a named church) while in his care. Counsel maintained that there was no allegation of moral impropriety against the appellant that would justify deprioritising this facet of the children's upbringing and submitted that the learned judge's disregard of this factor was an error.

[34] Mr Neale took issue with the emphasis placed on domestic violence, arguing that the learned judge improperly applied English authorities which require such violence to be considered only when it affects the children directly. Counsel further argued that the judge's conclusion — that the appellant's parenting capacity was diminished by his failure to acknowledge past abuse — was not supported by professional evidence. The psychologist and social enquiry officer did not expressly criticise the appellant's parenting abilities or indicate that his conduct posed present or future risk to the children, counsel argued. It was asserted that the children's improved academic performance and emotional stability during that period reflected a positive caregiving environment, which warranted greater consideration in the welfare analysis.

Submissions on behalf of the respondent

[35] Counsel for the respondent, Mrs Johnson, disagreed with the appellant's contention. She submitted that the learned judge did, in fact, treat the welfare of the children as paramount, and that her analysis of the evidence was both detailed and forward-looking. She argued that while the children experienced a degree of stability in Jamaica, the learned judge correctly found that emotional trauma remained

insufficiently addressed and that the appellant had not taken rehabilitative steps, such as therapy or counselling, to mitigate its impact.

[36] Mrs Johnson relied on **Amanda Whittingham v Collin S Whittingham** [2021] JMSC Civ 1 to support the argument that domestic violence should not be treated as a private dispute between the parents, but as a central factor in determining the children's long-term wellbeing. She maintained that the learned judge properly contextualised the respondent's unauthorised removal of the children, citing credible evidence of domestic abuse and recognising the protective intent that underlay the relocation.

[37] On the issue of residence, Mrs Johnson asserted that the term "ordinary residence" carries limited weight in custody matters and is not determinative. It is merely one among many factors to be considered within the paramount welfare assessment. Citing **Campbell (Seaton) v Rose-Brown (Donna) and Anor** [2016] JMCA App 35, counsel argued that the key question is not simply where the children reside, but what promotes their overall wellbeing. Reference was also made to **Re B (A Child)** [2009] UKSC 5 to support the view that neither habitual residence nor current location overrides the court's duty to determine where—and with whom—the children will thrive most holistically.

[38] Mrs Johnson submitted that while the learned judge did acknowledge and examine the children's time in Jamaica (after their return), including their educational progress and social connections, those factors were ultimately outweighed by more compelling considerations. These included the emotional stability afforded by the respondent's home environment in the USA, the history of parenting and the consistency with which the respondent had provided primary care, as well as the educational opportunities and support systems available to the children while under her care.

[39] Mrs Johnson further submitted that the respondent's plan for care, control and relocation was comprehensive, credible, and child-focused — addressing the children's educational continuity, emotional rehabilitation, and social reintegration. She argued that the learned judge was entitled to prefer that plan over the appellant's more

routine-based parenting arrangement, particularly given the findings regarding emotional neglect and unresolved trauma.

Discussion and disposal of issue i

[40] The governing standard in custody matters under section 18 of the Act is clear: the welfare of the children must be the first and paramount consideration (see also **F v D**, paras. [6] – [7]). It is not sufficient to prefer one parent’s proposal based solely on historic caregiving or routine structure; the inquiry must be holistic and prospective.

[41] The learned judge demonstrated an appreciation of the applicable law that the welfare of the children is the paramount consideration. She took into consideration relevant factors which demonstrated that both parents could make adequate provisions for the children’s welfare spanning their education, residence and psychological wellbeing (paras. [41]-[56] of her written judgment).

[42] Discounting embellishments that are normal in these types of cases and being clear that the decision was not whether one parent was more impeachable than another, the learned judge determined, on the evidence, that the respondent, being the children’s primary caregiver throughout their lifetime except for about a year, was best suited for their care and control. There was unchallenged evidence before her on which that decision was made. Prior to their departure to the USA, the children received day and school aftercare at a kindergarten operated by the respondent, apart from her regular maternal role. The bond between mother and children would naturally be a strong one and it was only interrupted for the one year when they were in their father’s primary care and control.

[43] In arriving at her decision, the learned judge was guided by the reasoning in **F v D**, where Sykes J (as he then was), at paras. [9] – [14], cited and applied **Re Thain** [1926] Ch 676 and **S (BD) v S (DJ)** [1977] 1 All ER 656 to caution against the use of the term “unimpeachable parent” and to reinforce the requirement that the welfare of the child must override any evaluative labels attached to either parent.

[44] Mr Neale’s criticism of the learned judge’s treatment of domestic violence was unfounded. The learned judge found that there was credible evidence that the children

had been exposed to verbal and physical violence between the parents, and verbal abuse, at the instance of the appellant, even after their separation. The psychologist's report established that this affected the children psychologically. At page 2 of the psychological report, the interview with the children revealed:

"Both children indicated that their dad fights their mom, and they shouted at each other. [NT] indicated that he is tired of his parents fighting. He missed his mother and wanted to be with her. [ET] indicated that she wanted to be with both parents in [the] USA. Therapist's view: Children (who have lived with both parents) will be emotionally affected by parental conflict and even more by separation. Often children internalize their traumatic pain and blame."

[45] This was a legitimate matter for the learned judge to have considered in her assessment of the children's welfare. It was reasonable for her to have found that the appellant's refusal to accept this fact, including accusing his young children of lying about it, meant that he might not have attended to their mental health in that regard. The learned judge's finding that he had also inappropriately reprimanded NT, who had been reportedly bullied, is supportive of this concern. In contrast, the respondent was awake to the challenge and offered evidence of arrangements for the children's psychological welfare in the USA. At pages 19-25 of the home study report, the clinical social worker opined as follows:

"[The respondent] recognises how she and their father's actions have impacted [the children's] mental and emotional health and behaviours. She does not expect them to react or respond the same as each other. She is willing to provide them with therapeutic resources to help them process, heal, and cope from their traumatic experiences...This social worker provided her resources in the Harris County area that she can utilize for support and resources for herself. She was receptive to the information and plans to seek resources for her family. [The respondent] feels confident in her ability to access resources through the school district, as well as therapeutic resources through her community."

[46] The learned judge clearly appreciated that analysis of how the parties conducted themselves was not for the purposes of judging them against each other

but to assess the impact of their conduct on the children's welfare. At para. [73] of her judgment, she referenced section 7 of the Act, which provides that conduct is one of the factors to be considered in an application for custody. The authorities interpret that provision to mean conduct in so far as it impacts the best interests and welfare of the children (see **F v D**, at para. [14]; and **S (BD) v S (DJ)** [1977] 1 All ER 656, at pages 660-665). This was the context of the learned judge's assessment of domestic violence.

[47] Mr Neale's criticism of the learned judge for her reliance on English authorities was misplaced. The learned judge referenced the local authority of **Whittingham v Whittingham** [2021] JMSC Civ 155, where Carr J cited **Re H-N and Others (Children)** [2021] EWCA Civ 448 and quoted extensively to support the proposition that domestic violence constitutes conduct that may properly be considered in a custody case under section 7 of the Act (paras. [73]-[75] of judgment). This proposition is rooted in common sense. As this court observed at page 8 of **Dennis Forsythe v Idealin Jones**, the child's welfare must be assessed against well-established factors such as happiness, moral and religious upbringing, social and educational influences, psychological and physical wellbeing, and material surroundings. Importantly, the conduct of the parents must also be considered as an influencing factor in the life of a child and his or her overall welfare.

[48] At para. [106] of her judgment, the learned judge stated:

"After careful consideration of the evidence with the welfare of the children as my paramount consideration, I find that it is in their best interest to have them relocate to reside in the USA to live with the [respondent] who has always been their primary caregiver. Based on the evidence led in this matter, it is clear that they are already familiar with the home there as they have travelled there before for recreational purposes and resided there for about a year after they were relocated in March 2022 by the [respondent]. I do not find that the move will have a significantly detrimental effect on their welfare as there are already suitable arrangements in place for their education and care and they have already demonstrated their ability to re-adapt to previously familiar surroundings."

[49] The evidence, at pages 26-28 of the notes of evidence, supports these findings.

[50] Contrary to Mr Neale's contention, there was evidence of how the children were doing in school while with the respondent for the year in the USA. The respondent seemed to have given unchallenged evidence of the schools they were enrolled in, and that they were excelling, particularly NT, after receiving extra help. See, for example, para. 23 of the respondent's affidavits filed 23 March 2023 and 20 April 2023.

[51] This evidence was available to the learned judge, but she did not expressly consider it in her analysis. However, I did not consider that this detracted from her careful evaluation of the evidence and her weighing of the various competing factors involved in her determination of the care and control of the children. She focused, in this instance, on the evidence of how the children had been doing in school at the time of the trial, thus she stated:

"[47] Based on the evidence before this court, it is noted that the children are well socialized and educated. They are both attending [school] and their most recent reports indicate that they are doing very well academically and thriving in their school environment. This is not disputed by the parties.

[48] The only dispute was the alleged change in N's performance at school after he was returned to the jurisdiction. The [respondent] claimed that N was having difficulty before he left Jamaica. The [appellant] stated that on his return he was found to be lagging behind his peers. I am not able to verify that this is so, as only current reports were disclosed to the Court, there was none from the school at which he was previously enrolled [name of school omitted]. The court was also not made privy to the assessment showing the regression which father claimed.

[49] ...Nevertheless, based on the later school reports presented to the court, his current performance is exemplary."

[52] It was for the learned judge to accord what weight, in her discretion, was appropriate to each aspect of the evidence. In this instance, she seemed to have given significant weight to the evidence of the children's education, in Jamaica, while they

were in the sole custody of the appellant. In her analysis (with which I agreed) she indicated that she could only use the evidence that was placed before her. That indication, naturally, would apply to the evidence about what obtained both in Jamaica and the USA.

[53] I found no merit in Mr Neale's contention that the learned judge weighted the moral and religious aspect of the evidence too low. Firstly, whilst religious and moral upbringing is accepted as a relevant factor in custody cases, there is no prescription as to the weight a trial judge should attach to it. It must depend on the judge's own assessment of the evidence and all the surrounding circumstances. Secondly, the learned judge cannot be faulted for saying that there was no independent confirmation that the children "currently attend Mass and Sunday School at [the named] church" when there was no such evidence. Thirdly, that statement of fact did not seem to negate her earlier statement, viz., "[as] to their religious upbringing, both parties agreed that they attended church in Jamaica". Fourthly, those statements about the children's religious upbringing, while they were in the sole custody of the appellant, were juxtaposed with statements by the respondent about the religious upbringing of the children, whilst in her sole custody in the USA, which the learned judge found to be inconsistent. There was no imbalance in that approach.

[54] Lastly, it was within the remit of her judicial discretion for the learned judge to decide that as to the children's moral upbringing "it [was] difficult to make an assessment because of their age and the fact that there [was] no evidence from experts as to this specific issue".

[55] The learned judge applied the correct legal test and undertook a sufficiently broad welfare analysis. While the appellant's contributions to the children's routines and religious upbringing were acknowledged, the learned judge was entitled to give greater weight to evidence addressing psychological rehabilitation, future emotional stability, and protective caregiving. The appellant's latter contention, therefore, also lacked merit. In the result, those grounds of appeal, considered under issue i, failed.

Issue ii: Whether the learned judge correctly assessed the material factors affecting the welfare of the children (Grounds: b, d, g, i, j, k, l)

[56] While framed as distinct, issues i and ii are inextricably linked in substance. Accordingly, it is unnecessary to rehearse counsel's submissions. Instead, I will address a few nuanced arguments advanced in relation to issue (ii), noting that they did not introduce any materially novel considerations.

Submissions on behalf of the appellant

[57] Mr Neale submitted that the learned judge misdirected herself by placing undue weight on the respondent's post-separation relocation plans, even though the move to the USA occurred without the appellant's consent and in breach of Jamaican custody orders. He contended that, even if the respondent's motives were protective, her unilateral actions disrupted the children's educational, familial, and cultural ties within Jamaica, factors that should have been given greater prominence in the learned judge's welfare analysis.

[58] Mr Neale relied on **F v D** in which Sykes J, at para. [18], cited dicta from Lord McDermott in **J v C** [1970] AC 668 where he said, among other things:

"Some of the authorities convey the impression that the upset caused to a child by a change of custody is transient and a matter of small importance. But I think a growing experience has shown that it is not always so and that serious harm even to young children may, on occasion, be caused by such a change... a child's future happiness and sense of security are always important factors and the effects of a change of custody will often be worthy of the close and anxious attention which they undoubtedly received in this case."

Counsel contended that the learned judge failed to appreciate the disruptive impact of the relocation order, which will effectively uproot the children from a stable home and school environment in Jamaica. He further observed that no cross-application for relocation had been made by the respondent, and thus the order was granted in the absence of any formal application before the court.

[59] In support of his argument, Mr Neale also relied on **BP v RP**, (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 51/2008, judgment delivered 30 July 2009, asserting that the learned judge did not adequately engage with the established principles governing relocation. In particular, he pointed to the need for a careful assessment of the emotional and psychological consequences for the relocating parent in the event of refusal. Counsel noted that the respondent had been managing under the existing arrangements, suggesting that the necessity for relocation had not been sufficiently demonstrated.

[60] Viewed cumulatively, counsel submitted that the orders for relocation and care and control were unsafe, having arisen from a flawed exercise of judicial discretion.

Submissions on behalf of the respondent

[61] In response, Mrs Johnson submitted that the learned judge's reliance on the post-separation relocation plan was both justified and appropriate, having regard to the paramountcy of the welfare principle. She contended that the respondent's unilateral removal of the children ought not to be treated as dispositive but rather considered within the broader framework of a welfare-based analysis. Counsel maintained that the learned judge undertook a holistic and principled evaluation of all relevant considerations. Her assessment, it was argued, did not amount to a mere comparison of caregiving routines, but instead reflected a comprehensive inquiry into the children's best interests.

[62] It was further submitted that the decision to permit relocation was grounded in a reasoned and structured plan for the children's future, encompassing housing, education, and therapeutic support. This plan, counsel argued, was supported by a robust evidentiary foundation and underpinned the learned judge's conclusion that relocation would advance the children's welfare. In support of this position, reference was made to **King v Low** and **Dennis Forsythe v Idealin Jones**.

[63] Finally, Mrs Johnson contended that the court's discretion was properly exercised in accordance with its statutory mandate and within its inherent jurisdiction to make orders under the *parens patriae* authority. In this regard, reliance was placed on **Seymour Richards v Sandra Richards**, (unreported), Supreme Court, Jamaica,

Claim No 2007 M 00756, judgment delivered 2 September 2008, page 4, citing **Harold Morrison v Noelia Seow** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 107/2001, judgment delivered 13 March 2003.

Discussion and disposal of issue ii

[64] The principle of child welfare is paramount, but this does not mean parties should wilfully avert lawful procedure. While the respondent's unauthorised relocation raised serious procedural concerns, the learned judge was entitled to examine the totality of the circumstances, including the reasons for the relocation and its impact on the children, in coming to a view about their best interests.

[65] The appellant urged this court to treat the post-separation relocation as a serious breach warranting sanctions. The learned judge acknowledged the improper and unilateral nature of the move and found unequivocally that the appellant had been denied his right to access the children. Her reasoning - framed by the family's history of domestic violence - reflected the delicate interplay between the respondent's legitimate safety concerns and the appellant's right to maintain a parental relationship with the children. While the relocation was procedurally improper, the evidence did not suggest that it was executed in pursuit of a strategic advantage or to undermine the appellant. It is also worth noting, that emphasising parents' rights, as opposed to the children's best interests, diverts from the focus of the paramountcy of the children's welfare.

[66] The learned judge addressed a range of welfare factors, including housing, religious exposure, school performance, and psychological wellbeing. A substantial portion of her judgment - spanning over 35 paragraphs - was devoted to assessing the children's happiness, trauma history, and emotional health. In relation to the social enquiry report, the learned judge observed at para. [55]:

"The evidence before the court clearly indicates that there are mental/psychological challenges affecting the family including the separation of the parents. Therefore, the conclusion that, 'the children appeared to be very happy in their father's care' cannot be adopted as an accurate assessment of the situation."

[67] While the appellant presented evidence of the children's routines, religious activities, and their generally positive appearance while in his care, the learned judge found that such external indicators were insufficient to negate the deeper emotional and psychological concerns raised by professionals and corroborated by the children's own expressions. At para. [85], she noted:

"Since the [appellant] has not sought to change his behaviour, this will remain an issue...He has also made no attempt to obtain further counselling for himself and the children for this issue..."

[68] The appellant's challenge to the validity of the relocation order was without merit. The order was a necessary and logical consequence of the determination to grant the respondent care and control of the children. The respondent resides in the USA, and the children are United States citizens. The appellant is also a permanent resident of the USA. In those circumstances, the consequential order permitting the children to leave the jurisdiction was properly incidental to the primary custody, care and control orders and fell within the lawful exercise of the learned judge's discretion. The Supreme Court possesses an inherent jurisdiction to make such orders in relation to children under its *parens patriae* authority. This jurisdiction was acknowledged in **Richards v Richards**, which cited **Harold Morrison v Noelia Seow**, as an example of its application. Further, as Mrs Johnson noted, the fixed date claim form invited the court to make "any order deemed fit".

[69] In all the circumstances, there was nothing inadequate or erroneous in the learned judge's discourse and analysis. Therefore, the grounds that gave rise to issue ii, lacked merit.

Issue iii: Whether the judge gave balanced consideration to the evidence before the court, or whether undue weight was placed on the respondent's account and insufficient regard given to the appellant's testimony and the contents of the Social Enquiry Report.
(Grounds: f, h)

Submissions on behalf of the appellant

[70] Mr Neale submitted that the learned judge accorded disproportionate weight to the respondent's and her witness' (Ms Stacey-Ann Smith's) evidence, while giving

insufficient consideration to the appellant's evidence and the findings of the social enquiry report. That report recommended that care and control be granted to the appellant, describing the children's living arrangement with him as stable and emotionally secure, and noting no evidence of abuse, neglect, or harm.

[71] It was further contended that the learned judge erred in the balancing exercise required under the welfare principle. Mr Neale argued that the analysis conflated relational hostility with parental fitness, placing undue emphasis on the conflict between the parties rather than assessing each parent's conduct toward the children in isolation.

Submissions on behalf of the respondent

[72] Mrs Johnson submitted that the respondent's witness gave evidence in support of the respondent's allegations of domestic abuse, underwent rigorous cross-examination, and the learned judge expressly addressed both the strengths and limitations of her evidence. It was emphasised that the learned judge, having observed the respondent's and her witness' demeanour under oath, was uniquely positioned to assess their credibility and reliability. In support, counsel cited **G v G** [1985] 2 All ER 225 and **Re W (A Child) (Residence Orders)** [1993] 2 FLR 625.

[73] Mrs Johnson also rejected the contention that the learned judge failed to consider the social enquiry report. She noted that the report was expressly acknowledged as part of the evidentiary record but was critically weighed against other, more probative materials. These included the expert's psychological assessment, the children's stated preferences, the documented history of trauma, the appellant's limited insight into the children's psychological needs, and the respondent's demonstrated commitment to therapeutic reintegration.

Discussion and disposal of issue iii

[74] The appellant's assertion that the learned judge's inquiry was misdirected (from child-focused conduct to inter-parental hostility), was without merit. The learned judge gave appropriate scrutiny to the evidence of both parties, the respondent's witness and to the social enquiry report. However, the social enquiry report, like the home

study report, was found to be inadequate, given the circumstances under which it had been compiled (paras. [51] – [55], [81] of the judgment) and was properly outweighed by the psychological and play therapy reports (paras. [56], [72], [77], [78], [81] of the judgment), which offered clinically grounded assessments of the children’s emotional wellbeing. These findings were further corroborated by other sources (paras. [59] – [69], [78], [83], [84], [107] of the judgment), establishing that the children had been exposed to, and psychologically affected by, violence in the home. Although the appellant maintained that the children were thriving under his care —emphasising structure, routine, and an absence of harm — the learned judge gave primacy to the therapy - based evidence, which pointed to underlying emotional trauma. Judicial discretion permits preferential reliance on evidence where credibility and probative value support it (see **In Re B (A Child)**).

[75] With respect to physical accommodation, the learned judge assessed the living arrangements of both parties and found each parent equally capable of meeting the children’s material needs (paras. [41]–[44] of the judgment). On the matter of moral and religious upbringing, she also found that there was no dispute that the children attended church in Jamaica.

[76] The evidence provided by both parties during their respective periods of care was unsupported, and no adverse finding was made against either. The learned judge did, however, note an inconsistency in the respondent’s testimony (paras. [45] – [46] of the judgment). A similar neutral stance was adopted in evaluating the children’s general socialisation and educational environment (paras. [47] – [49] of the judgment).

[77] Allegations of misconduct were approached with measured scrutiny. The learned judge rejected aspects of the appellant’s testimony concerning the Firearms Licensing Authority (‘FLA’) investigation and incidents of violence (paras. [66] – [68], [70], [72] of the judgment), while also identifying credibility concerns in the respondent’s evidence regarding her role in the violence (para. [71] of the judgment), the relocation to the USA (paras. [92] – [93] of the judgment), and her claim that the

appellant denied her access to the children upon their return to Jamaica (paras. [94] – [97] of the judgment).

[78] The learned judge acknowledged the appellant's involvement and efforts to provide care but concluded that such involvement did not mitigate the harm identified by professionals and the children themselves. Her assessment of the inter-parental relationship reflected a judicial understanding that exposure to conflict can materially affect a child's emotional development. While the analysis was robust, it may have benefited from a clearer articulation of how each evidentiary strand was weighed. Nonetheless, the overall framework remained permissible and firmly grounded in a welfare-centric approach.

[79] The balancing exercise undertaken by the learned judge was conducted across a broad evidentiary base and in accordance with applicable legal principles. In my view, she did not accord undue weight to irrelevant factors, nor did she fail to give sufficient consideration to relevant ones. Her analysis was responsive to both the legal and emotional complexities of the case, and consistent with established jurisprudence.

[80] The instant case is distinguishable from **In re B (A Child) (2009) (FC)** [2009] UKSC 5, the facts of which were relied on by the appellant. The grandmother in that case had been principally responsible for caring for the child from the time of his birth until the Court of Appeal directed a transfer to his father when he was four years old. It is, therefore, unsurprising that the Privy Council allowed her appeal from the decision of the Court of Appeal. In their Lordship's opinion, at para. 41, "[transfer of the child's] residence would involve a great deal more than a change of address. Many of the familiar aspects of his life which anchor his stability and sense of security would be changed". This was not so in the instant case, where the appellant had temporary sole custody of the children for just one year and the children had sufficient familiarity with both parents, as well as the school systems, in both Jamaica and the USA.

[81] The appellant's challenge on the grounds considered within the ambit of issue iii was, therefore, without merit.

Conclusion

[82] Both parents love their children deeply. However, their relationship is marked by sustained disharmony, rendering cooperative parenting virtually unworkable. In such circumstances, decisions regarding custody, care and control are among the most difficult a court must undertake. This was acknowledged by the House of Lords, in **G v G**, at page 651:

“... The jurisdiction in [custody] cases is one of great difficulty... All practical answers are to some extent unsatisfactory... and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of appeal, even if it would itself have preferred a different answer, can say that the judge’s decision was wrong, unless it can say so, it will leave his decision undisturbed”.

[83] The court cannot be Solomonic — it cannot divide the children or craft a flawless solution. It must select from imperfect options, guided wholly by the paramount consideration of the children’s welfare, even amid the unpredictability of fractured family life. This was precisely what the learned judge endeavoured to do. Having seen, heard, assessed and balanced the evidence, she cannot be faulted for ordering care and control to the respondent. She did so based on ample evidence that this was best for the children’s welfare. I found no error of principle or fact, or misapplication of the law that would warrant appellate interference with her decision.

[84] For those reasons, I concurred in dismissing the appeal and making the orders at para. [3] above.

LAING JA

[85] I, too, have read the draft reasons for judgment of Dunbar-Green JA and they accord with my reasons for concurring with the orders reflected in para. [3] herein.